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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,278	10/24/2001	Clark K. Colton	MIT-097CN	9671
21323	7590	01/28/2004	EXAMINER	
TESTA, HURWITZ & THIBEAULT, LLP			LE, BOA VAN	
HIGH STREET TOWER			ART UNIT	PAPER NUMBER
125 HIGH STREET				
BOSTON, MA 02110			1752	

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

SJT

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/040,278	COLTON ET AL.
	Examiner	Art Unit
	Hoa V. Le	1752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-27 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) \_\_\_\_ is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 10 April 2002 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
 a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                    6) Other: \_\_\_\_\_

This application is a continuation of application Serial No. 09/356,079 now Patent No. 6,368,592 and is now before the examiner for consideration on the merits.

I. Applicants' prior art submission filed on 24 October 2001 has been considered.

II. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aebischer et al (5,011,472) in view of Maget (5,788,682), Colton "CC" document in Form PTO 1449 as submitted and Schulman et al (6,315,721)

The claims are drawn to a cell encapsulating device comprising a semipermeable layer and an oxygen generator and a method of maintaining cells in the device.

Aebischer et al disclose, teach and suggest a system containing a semipermeable wall reservoir for growing cells. Please see the whole disclosure of each of the applied references especially in Aebischer et al cols. 2-5. Maget (5,788,682) disclose, teach and suggest device for supplying oxygen to feed cells using electrochemical reaction with anode and cathode electrodes and proton exchange membranes and anode and cathode electrodes at the both ends of the membranes..., especially at col.2:7-15, figure 5 and its descriptions. Colton discloses, teaches and suggests that cells need a supply of oxygen..., page 416 under "OXYGEN SUPPLY" and

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pages 419 and 421. Schulman et al disclose, teach and suggest an implantable rechargeable battery to provide an electrical power source. Since the above references are related to living cells in an oxygen permeable wall reservoir to be able to receive oxygen to feed the cells, an oxygen generator and an implantably rechargeable battery to provide an electrical source to operate the oxygen generator, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the known materials and its usefulness to cite in the claims in the absence of an unusual or unexpected result for the patentability of the claims.

III. Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Hoa V. Le whose telephone number is 571-272-1332.

The examiner can normally be reached on 6:30AM-5:00PM, M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark F. Huff can be reached on 571-272-1385. The fax phone numbers of the examiner is 571- 273-1332. Since there is a newly electronic filing procedure for all initial communicating papers and all responses to an Office action, the examiner fax phone number is not for use to receive any fax in response to an Office action. Applicant is requested and required to send all initial communicating papers and all response to Office action to a central paper or fax receiving center for an electronic scanning procedure.

Applicants may file a paper by (1) fax with a central facsimile receiving number 703-872-9306,

(2) mail with a central mail receiving address:

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Customer Window  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA 22202

For any related question please call Customer Service at 703-308-1202.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Hoa V. Le  
Primary Examiner  
Art Unit 1752

HVL  
16 January 2004

HOA VAN LE  
PRIMARY EXAMINER  
Hoa Van Le